

Assembly Bill No. 544

Passed the Assembly September 12, 2001

Chief Clerk of the Assembly

Passed the Senate September 6, 2001

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor

Corrected 9-26-01

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CHAPTER _____

An act to amend Sections 17302, 17304, 17310, 17312, 17314, and 17331.1 of the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

AB 544, Maldonado. Escrow agents.

Existing law, the Escrow Law, provides for licensing and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted. Existing law requires persons licensed as escrow agents to be members of the Escrow Agents' Fidelity Corporation, which is established as a nonprofit corporation to indemnify its members against loss, subject in certain cases to a deductible, and which is funded by fees and assessments on its members. Existing law requires employees of escrow agents and various other persons to obtain a certificate from the corporation as a condition of employment or compensation.

This bill would provide that the protection provided by the Escrow Agents' Fidelity Corporation does not extend to any transaction involving a branch or business location of a member outside of California. The bill would also increase to 100% the amount of the deductible applicable to a member who suffers a loss of trust obligations caused by a person who is required to have a certificate from the corporation but has failed to obtain one or has had a certificate denied, suspended, or revoked. The bill would make other related changes.

The people of the State of California do enact as follows:

SECTION 1. Section 17302 of the Financial Code is amended to read:

17302. "Trust obligation" means:

(a) All money and property deposited with a member within the State of California in an escrow or joint control transaction.

(b) All money and property deposited with a member to be held in trust within the State of California pursuant to a federal or state statute or requirements of a governmental agency.



SEC. 2. Section 17304 of the Financial Code is amended to read:

17304. “Loss,” within the meaning of this chapter, means the loss of trust obligations held by a member within the State of California as a result of the fraudulent or dishonest abstraction, misappropriation, or embezzlement of trust obligations by an officer, director, trustee, stockholder, manager, or employee of a member.

SEC. 3. Section 17310 of the Financial Code is amended to read:

17310. (a) It shall be the purpose of Fidelity Corporation to indemnify a member within the State of California against loss, subject to the limitations set forth in this chapter.

(b) Fidelity Corporation shall not be liable for any consequential damages sustained by a member, or by any other person, nor for any punitive damages whatsoever.

(c) The indemnification shall be provided by any of the following:

(1) A fund established by Fidelity Corporation pursuant to Section 17320.

(2) A fidelity bond or insurance policy to be approved by the commissioner.

(3) A combination of paragraphs (1) and (2) subject, however, to the maximum coverage specified in subdivision (b) of Section 17314.

SEC. 4. Section 17312 of the Financial Code is amended to read:

17312. (a) Each person licensed pursuant to this division who is engaged in the business of receiving escrows specified in subdivision (c) and whose escrow business location is located within the State of California shall participate as a member in Fidelity Corporation in accordance with this chapter and rules established by the board of directors of Fidelity Corporation. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license under the Escrow Law who is required to be a member under this subdivision.

(b) Upon filing a new application for licensure as required by subdivision (b) of Section 17213, persons required to be a member of Fidelity Corporation shall file a copy thereof concurrently with



Fidelity Corporation, but no additional membership fee or deposit shall be required.

(c) The required membership in Fidelity Corporation shall be limited to those licensees whose escrow business location is located within the State of California and who engage, in whole or in part, in the business of receiving escrows for deposit or delivery in the following types of transactions:

(1) Real property escrows, including, but not limited to, the sale, encumbrance, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

(2) Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

(3) Fund or joint control escrows, including, but not limited to, transactions specified in Section 17005.1, and contracts specified in Section 10263 of the Public Contract Code.

(4) The sale, transfer of title, or refinance escrows for manufactured homes or mobilehomes.

(5) Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code or by regulation of the Department of Real Estate to be held in an escrow account.

(6) Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

(d) Coverage required to be provided by Fidelity Corporation under this chapter shall be provided to members only for loss of trust obligations with respect to those types of transactions specified in subdivision (c). Indemnity coverage for those types of transactions not specified in subdivision (c) shall be provided by escrow agents in accordance with Section 17203.1.

SEC. 5. Section 17314 of the Financial Code is amended to read:

17314. (a) Fidelity Corporation shall pay a member for loss of trust obligations subject to the limitations set forth in this chapter. Fidelity Corporation shall pay or deny the claim within 90 days of receipt of the proof of loss filed by a member, or a member's successor in interest. Notwithstanding any other provision of this article, the protection to members provided by Fidelity Corporation and by the fidelity bond or insurance policy, if any, shall not extend to any transaction involving any member



at any branch or business location outside the State of California, but shall extend only to escrow trust obligations and trust funds located within the State of California.

(b) Coverage shall be provided to members in accordance with the following schedule:

MONTHLY AVERAGE ESCROW

| LIABILITY PER LOCATION | COVERAGE |
|---------------------------------|-------------|
| \$0 – \$ 1,000,000 | \$1,000,000 |
| over \$1,000,000 – \$ 3,000,000 | \$2,000,000 |
| over \$3,000,000 – \$ 5,000,000 | \$3,000,000 |
| over \$5,000,000 – \$ 7,500,000 | \$4,000,000 |
| over \$7,500,000 – \$10,000,000 | \$5,000,000 |

(c) A member shall maintain minimum coverage in accordance with the schedule in subdivision (b) and shall monitor its escrow liability monthly. An increase in escrow liability above the monthly average escrow liability coverage as provided for in subdivision (b) shall be reported immediately to Fidelity Corporation. Upon receipt of this report, Fidelity Corporation shall immediately provide for the increase in coverage, and shall immediately bill and collect pursuant to Section 17321, an amount necessary to provide for the increased coverage.

(d) Any member with a licensed location or locations with a monthly average escrow liability greater than ten million dollars (\$10,000,000) shall obtain a bond from a corporate surety which is an admitted insurer in the State of California insuring the balance of trust funds not covered by Fidelity Corporation, in a ratio of one dollar of coverage for every three dollars of trust obligations not covered by Fidelity Corporation. The Fidelity Corporation shall have the authority to obtain the excess coverage bond. The cost of the bond shall be shared pro rata by those members included in the coverage.

(e) If a member establishes, to the satisfaction of the commissioner, that a bond is not available or is impracticable under subdivision (d), then, at the member's election, either:

(1) The member shall place average trust obligations in excess of ten million dollars (\$10,000,000) in a restricted escrow trust account. Each transfer or release of the funds to be made by specific resolution of the member's board of directors and the



signature of a neutral third party and written approval of Fidelity Corporation; or

(2) The licensed location of the member with average trust balances in excess of ten million dollars (\$10,000,000) shall be subject to examinations to be conducted at a frequency as deemed appropriate and necessary by the commissioner or Fidelity Corporation, but not less frequently than once a year.

(f) Any member subject to subdivision (e) shall within 10 business days after the effective date of this section notify Fidelity Corporation of its election. A member who subsequently becomes subject to subdivision (e) shall within a like period of time notify Fidelity Corporation of its election. Fidelity Corporation shall also be notified of any change of election in a like period of time. Fidelity Corporation shall notify the commissioner within 10 business days of receipt of any notice under this subdivision of the elections made. All notices under this subdivision shall be in writing.

SEC. 6. Section 17331.1 of the Financial Code is amended to read:

17331.1. (a) As of January 1, 1992, any person not previously issued a certificate must, upon employment with an escrow agent within this state, apply to Fidelity Corporation for a certificate within 10 business days. The person may continue employment until or unless denied a certificate by Fidelity Corporation. The member shall submit all applications for certificates to Fidelity Corporation within 10 business days of the date of employment.

(b) Upon written notice by Fidelity Corporation to any or all members that any person has been denied a certificate, or has had a certificate suspended, canceled, or revoked, no member or person acting on behalf of a member shall authorize that person to have access to money or negotiable securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Any member or person who commits or who causes a violation of this section, which violation was either known or should have been known by the member or the person committing or causing the violation, may be subject to action by the commissioner and Fidelity Corporation as provided for in this division.



(c) Each member and each person required to have a certificate shall comply with the Fidelity Corporation rules, to be approved by the commissioner, concerning the manner and timing within which Fidelity Corporation shall receive notice of employment, change of the person's name, mailing address, or employment status, the certificate form, and the procedures for the administration thereof. Fidelity Corporation may collect a fee to cover the cost of processing the notices but no fee shall exceed twenty-five dollars (\$25).

(d) Fidelity Corporation shall assess the member a penalty at the rate of twenty-five dollars (\$25) for every day that the member has not fully complied with this section, Section 17331, or Section 17331.2.

(e) Any member that suffers a loss of trust obligations caused by any person who is required to have a certificate but has (1) failed to apply for a certificate, (2) has had the application for a certificate denied, (3) has a suspended certificate, or (4) whose certificate has been revoked shall be obligated to pay a deductible in the amount of 100 percent of the amount of the loss, notwithstanding the amount of the statutory deductible as prescribed by Section 17314.3. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate shall not limit the obligation of Fidelity Corporation to indemnify a member against loss of trust obligations as defined in this division.

Approved _____, 2001

Governor

